2nd Civil No. B 114226
LASC No. BC 008240

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION

SYED MOUZZAM ALI,

Plaintiff, Respondent and Cross-Appellant,

vs.

THE CITY OF LOS ANGLES, A Municipal Corporation,

Defendant, Appellant and Cross-Respondent.

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY
HONORABLE LAWRENCE W. CRISPO, JUDGE

PETITION FOR REHEARING

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Authorities Omitted In Printing]

INTRODUCTION

Respondent, City of Los Angeles, petitions this Court for a rehearing pursuant to **Rule 27, California Rules of Court.** Rehearing is sought on the grounds that this Court, in its opinion filed December 28, 1999 [hereafter Opinion] made factual findings which conflict with the factual findings, both express and implied by the unappealed final judgement in the 1989 case of *Ali v. City of Los Angeles* (C736585) [hereafter Ali I];[1] that this Court, in the Opinion made factual findings which conflict with the factual findings, both express and implied of the trial court below; and that the established facts of this case do not support the trial court's legal conclusions.

DISCUSSION

The Opinion at pp. 14-15 contains the following purposed findings of fact.

> (1) "The City has never disputed the unenforceability of the SRO ordinance in light of the Ellis Act nor claimed a good faith mistake. . . . "
>
> (2) "The City's delay of the demolition was so unreasonable from a legal standpoint as to be arbitrary and not in furtherance of any legitimate governmental objective. Therefore the delay incurred by the City's insistence that the

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[1] A copy of the complaint and the City's successful demurrer in that case is attached hereto as Appendix A and Appendix B, respectively, to this petition for rehearing.

> SRO classification precluded issuing a demolition permit, including the ensuing litigation, were not simply normal delays in the development process."

The judgement in Ali I precludes this court from making any of the above findings.

A. The Opinion Conflicts With Judge Zebrowski's Unappealed Decision In Ali I.

In Ali I, plaintiff alleged that he applied for a demolition permit for the Ferraro Hotel in January, 1989, (First Amended Complaint, page 2:28 to 3:1-2). Ali also alleged that the Ferraro Hotel "is not an S.R.O. Hotel" within the definition of the SRO Ordinance. (First Amended Complaint, p. 4:16-19.).

In its demurrer the City established that Ali had received a list of corrections required by the Department of Building and Safety prior to issuing a demolition permit for the Ferraro Hotel, including compliance with the SRO ordinance. However the City pointed out that any determination by the Department can be appealed; and that this right of appeal would include the determination on whether a building is or is not an SRO hotel subject to the provisions of the SRO ordinance. The City also urged that the First Amended Complaint was subject to demurrer because Ali failed to exhaust available administrative remedies. (Memorandum of Points and Authorities In Support of Demurrer and Request For Judicial Notice [Demurrer]), pp. 7:25 to 8:18 and 5:18 to 6:17).

Further, the City noted that Ali claimed that the SRO Ordinance "as it is being applied by the Department in this instance was unconstitutional because the SRO ordinance in the words of the First Amended Complaint "attempts to circumvent and preempt a legitimate state interest," of Government Code § 7060, et seq., commonly referred to as the Ellis Act. (First Amended Compliant, p. 7:9-14).

The City disputed this legal contention. The City argued that the Ellis Act did not prohibit a municipality from enacting an ordinance regulating the issuance of demolition permits. Rather the Ellis Act only prohibits a public entity from compelling the owner of residential real property to offer the property for rent or lease; and because the SRO ordinance does not compel Ali to offer his property for rent or lease, the SRO ordinance as applied to Ali did not run contrary to the Ellis Act. (Demurrer, p. 12:1-17) In Ali I, the trial judge, Judge Zebrowski accepted the City's legal arguments.

The judgment in Ali I held that the City had the legal right to require exhaustion of administrative remedies as part of the development approval process in this instance. (JA 187) Plaintiff did not appeal this judgment. Therefore it is res judicata on the issue of what was the legally required development approval process in connection with Ali's request for a demolition permit. *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154; *Patrick Media Group, Inc. v. California Coastal Commission* (1992) 9 Cal.App.4th 592.

After the judgement in Ali I, all the parties relied on that decision. Plaintiff exhausted his administrative

remedies and the City granted him a demolition permit. Plaintiff is not entitled to have this court rewrite these historical events to fit with plaintiff's current claim that these cause of events violated federal constitutional rights.

B. The Opinion Contains Findings Of Historical Fact Which Conflict With The Findings Of Historical Fact Made By Judge Crispo.

It is undisputed by the parties that there was a delay in the issuance of a demolition permit between January 1989 and August 1990. However Judge Crispo found as an historical fact that this delay was due to a misclassification of the property. Judge Crispo, in ruling on plaintiff's regulatory taking claim made no mention of the Ellis Act whatsoever. Judge Crispo, in ruling on Ali's cause of action for inverse condemnation found that: "The City's initial designation of the Ferraro as an SRO was erroneous. The SRO ordinance prevented the immediate demolition of the Ferraro . . . " (JA, XIV, p. 3829)

In so finding, the trier of fact rejected the finding sought by plaintiff at trial. At trial plaintiff urged the trier of fact to find that the delay in the issuance of a demolition permit was due the a violation of the state Ellis Act. Plaintiff argued at trial as follows:

"Ali's "taking" lawsuit is NOT based on the fact the the Ferraro [Hotel] was improperly classified an SRO. It is based on the fact that even if it were an SRO, denying permission to demolish any apartment building (even an SRO) is a violation of the Ellis Act and a taking of one's property." (JA, XIII, p. 3585).

Judge Crispo's finding of fact rejects plaintiff's attempt to rewrite history. The trial court's factual finding is based on the finding about the actual historical events surrounding the City's initial refusal to issue a demolition permit. Substantial evidence supports this finding of fact. The actual historical events show that during the delay period all the City players as well as plaintiff Ali, his lawyers, lobbyists, attorneys and other representatives were concerned about the classification or the misclassification of the Ferraro Hotel. (See the actions described in Appellant's Opening Brief, pp. 3-4 and 14-15) At no time during the delay period did plaintiff contend that he was entitled to a demolition permit under the Ellis Act even if the Ferraro was an SRO.

In that complaint plaintiff alleged that the Ferraro was not an SRO and that the Ellis Act gave him the right to demolition permit.

Further as pointed out above, the City successfully argued in Ali I that this factual dispute over classification could be resolved by exhaustion of administrative remedies. This decision was not appealed by plaintiff. It is still binding on the parties and thus cannot form the basis of a taking claim. The Ali I decision is final and may not be relitigated even if this court does not necessarily endorse its reasoning or conclusions.

Finally, Judge Crispo made the following findings about the character of the City's actions:

"[T]he City's action were not oppressive nor do they shock the conscience. While the actions of the City's employees were negligently performed, there is no credible evidence that they deliberately sought to deprive Mr.

Ali of his due process rights. On the contrary, the court finds that they acted in good faith. Finally, the City's action, though misguided, was an attempt to further legitimate interests in protecting both its zoning integrity and the public." (JA, XIV, p. 3896)

While this finding of historical fact may not fit in with plaintiff's current theory of constitutional deprivation based on a violation of the Ellis Act, plaintiff is not entitled to have history rewritten. The development approval process centered around a dispute over the correct classification of the Ferraro Hotel. Once plaintiff appealed the City's initial erroneous determination and proved that the City had indeed misclassified the Ferraro, he received the permit he was entitled to.

C. **Delay Attributed To Administrative Appeal Process Is An Incident Of Ownership Which Cannot Be Considered A Taking.**

An applicant is aggrieved by an initial determination. The applicant files an administrative appeal and gets relief thought [sic] the administrative process.

This scenario is probably repeated thousands of times in a year in the State of California. In California the filing of an administrative appeal is a basic element of the land use decisionmaking process.

The fact that an applicant could develop a legal theory by which exhaustion of administrative remedies could conceivably be short circuited does not change the character of land use decision making in the State of

California. Indeed it is not unusual for aggrieved applicants on appeal to raise arguments based on state statutes, the state constitution, federal statutes and the federal constitution as well.

These claims however are usually based on factual contentions that can be proven or disproven during the administrative appeal process. Often the applicant can get relief through the administrative appeal process without having to go to court to resolve issues of state or federal law. Such is the nature of the land use approval process in California.

It is simply a bad idea to suggest or imply that aggrieved applicants should abandon the administrative appeal process and go straight to superior court with all their statutory and constitutional claims in the first instance. Moreover, such a suggestion is wholly inconsistent with the well established jurisdictional requirement that one exhaust administrative remedies prior to resorting to the court. *Abelleria v. Dist. Ct. of Appeal* (1941) 17 Cal.2d 280, 292.

Such a procedure would surely overwhelm the superior courts. It would tax the resources of applicants who would have to decide what claims they should pursue administratively and which ones they should file in the first instance in superior court. City officials would also be overwhelmed with the task of having to review all claims by all applicants before a hearing on an administrative appeals. They would be compelled to make decisions on the merits of the aggrieved applicants claims without having a throughly [sic] developed administrative record before them.

Further, such an approach would do little to instill public confidence in local government. Those interested persons entitled to notice and hearing on appeal hearings would find decisions being made in the proverbial "back-room" without any public input.

In *First Lutheran Church v. Los Angeles County* (1987) 482 U.S. 304, 96 L.Ed.2d 250, 107 S.Ct. 2378, the Supreme Court indicated that a governmental regulation which deprives a landowner of all economically viable use of the land may constitute a regulatory taking of property which requires just compensation under federal constitutional law. In *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, (hereafter *Landgate*), the California Supreme Court held that the duty to provide just compensation did not extend to the case of normal delays in obtaining building permits, changes in zoning ordinances, variances, and the like. Further, the court concluded that such a regulatory mistakes resulting in delay does not result in a taking. (17 Cal.4th p. 1018-1022)

Landgate is dispositive and compels this court to set aside the judgment of the trial court and enter judgment on behalf of the City. In the present case plaintiff's filing of an administrative appeal lead to the reversal of the City's initial erroneous decision and the issuance of a demolition permit. The trial court found the City's actions were in good faith. The record shows that City staff went the extra mile to ferret out the true facts and give plaintiff the permit he was entitled to receive under the City's own ordinances. Even though issues raised during the approval might rise state law questions, this normal process of administrative appeal and reversal of

administrative error may take place without giving raise to a federal constitutional claim for relief.

D. The Opinion Must Be Modified.

It is clear from this review of the proceedings in Ali I and the findings of historical fact made by Judge Crispo in the trial on the inverse condemnation claim that:

1. In Ali I, the City successfully defended the enforceability of the SRO ordinance in light of the Ellis Act. In the face of plaintiff's Ellis Act claim, the City's position was that exhaustion of administrative remedies could lead to the issuance of a demolition permit. It is an undisputed historical that exhaustion of these remedies did lead to issuance of the requested demolition permit.

2. There was a good faith factual dispute over the correct classification of the Ferraro Hotel. The City delayed issuance of a demolition permit until plaintiff proceeded to exhaust his administrative remedies with respect to the classification issue. The City's approach was upheld by Judge Zebrowski in Ali I. Even if this court does not now endorse the decision in Ali I, plaintiff is bound by this decision.

3. As Judge Crispo expressly found, the City acted in good faith in an attempt to further legitimate interests in protecting both its zoning integrity and the public.

To the extent the Opinion suggests otherwise, it is erroneous and should be modified.

CONCLUSION

Based on the foregoing, respondent City of Los Angeles respectfully requests this Court to grant rehearing of the issues raised in this petition.

Dated: January 11, 2000

Respectfully submitted,

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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SYED MOUZZAM ALI, Plaintiff/Petitioner, vs. CITY OF LOS ANGELES, a Municipal corporation, Los Angeles City Department of Building and Safety, DOES 1 Through 100, Inclusive, Defendants/ Respondents,	Case No. C 736 585 FIRST AMENDED COMPLAINT FOR: 1.) DECLARATORY AND INJUNCTIVE RELIEF; 2.) PETITION FOR WRIT OF MANDATE 3.) ATTORNEYS FEES; 4.) NEGLIGENCE; 5.) FORCIBLE ENTRY; 6.) FORCIBLE DETAINER; 7.) QUIET TITLE; 8.) INTERFERENCE WITH CONTRACT; 9.) NEG. INFL. EMOTIONAL DISTRESS

COMES NOW THE PLAINTIFF/PETITIONER, SYED MOUZZAM ALI, who complains and alleges as follows:

PRELIMINARY ALLEGATIONS

1.) Plaintiff is and at all times mentioned herein has been an individual residing within the City of Los Angeles, County of Los Angeles, State of California.

2.) Defendant CITY OF LOS ANGELES (hereinafter referred to as the "CITY") is and was at all times mentioned herein a public agency.

3.) Defendant LOS ANGELES CITY DEPARTMENT OF BUILDING AND SAFETY (hereinafter referred to as "DEPARTMENT") is and was at all times mentioned a public agency charged with certain duties including the issuance of demolition permits for buildings within the City of Los Angeles.

4.) Defendants sued herein as DOES 1 THROUGH 100, INCLUSIVE, are individuals and/or entities who have contributed to the injuries and damages the plaintiff has sustained, and who the plaintiff at the present time does not know their true names and capacities, thus they are being sued by such fictitious names, however when the true names and capacities of said defendants are ascertained, plaintiff will amend this complaint/petition to reflect same.

5.) At all times mentioned herein each of the defendants was the agent, employee and/or servant of each and every other defendant and was acting within the purpose and scope of said agency, employment and/or servitude with the full knowledge and permission of each and every other defendant.

6.) At all times mentioned herein, plaintiff was and currently is the owner of certain improved real property

known as the Ferraro Hotel, located at 2065 West Sixth Street, Los Angeles, (hereinafter referred to as the "PROPERTY").

7.) On November 17, 1988, the "PROPERTY" was severely damaged by fire and as a result thereof, the "CITY" through the "DEPARTMENT" issued an "ORDER TO COMPLY" (order number A 95162) ordering plaintiff, to amongst other things, "Demolish and remove the remaining portion of the building that is damaged beyond repair."

8.) Thereafter in or about January, 1989 plaintiff applied to the "DEPARTMENT" for a demolision [sic] permit as the entire building was beyond repair.

9.) On or about February 13, 1989 the "DEPARTMENT" issued and "ABATE ORDER" ordering plaintiff to demolish the "PROPERTY".

10.) Thereafter the "DEPARTMENT" under orders from the Los Angeles City Council refused to act on the application for a demolition permit.

11.) On or about March 16, 1989 the "DEPARTMENT" issued a second "ABATE ORDER" superceding the first "ABATE ORDER" and which ascertained that the "PROPERTY" was repariable [sic] despite the fact that since November 17, 1988 there have been multiple fires, further damaging the "PROPERTY" and making it economical unfeasible, if not totally impossible to repair.

12.) On or about August 10, 1989 the "DEPARTMENT" issued another "ORDER TO COMPLY" (Order number K 93158) ordering plaintiff to secure the building and all openings from entry from the exterior of the

building and maintain same secured and the "CITY" by resolution of the Los Angeles City Council order the "DEPARTMENT" to secure the property and maintain security at the "CITYS" expense with the lien for costs and expenses for such action attaching to said "PROPERTY"

13.) The "CITY" thereafter barred plaintiff from all access to his "PROPERTY".

14.) It was plaintiffs intention in seeking a demolition permit to remove the "PROPERTY" as a public hazard and due to the numerous fires, go out [sic] business as a landlord for both residential and commercial tenants.

15.) The "CITY" and the "DEPARTMENT" have refused to process plaintiffs application for a demolition permit because they contend:

A.) The "PROPERTY" is an S.R.O. (Single Room Occupancy) Hotel as defined by Los Angeles City ordinance 162,663 as extended by Ordinances 163, 182, 163, 622, 164, 175 and Ordiance [sic] 164,827 which was in force at the time plaintiff applied for the demolition permit, and under such ordinances no S.R.O. Hotel may be demolished except to comply with an order issued by the "DEPARTMENT" when and if the "DEPARTMENT" has determined any such building is "infeasible to repair."

B.) The "DEPARTMENT" contends that the "PROPERTY" is feasible to repair.

16.) There is no legal basis for the "CITY" and the "DEPARTMENT" to refuse to process plaintiffs application for a demoliton [sic] permit because:

A.) The "PROPERTY" is not an S.R.O. Hotel within the definition of an S.R.O. Hotel by Los Angeles City Ordinance 164,827 which defines such buildings as those being:

> "An apartment building, hotel or other structure containing six or more guest rooms in which thirty percent (30%) or more of the units do not contain a private bath and toilet facility within the unit"

As the "PROPERTY" contained units in which less than thirty percent (30%) of them did not contain a private bath and toilet facilities;

B.) The "PROPERTY" has been virtually destroyed 100% and is totally infeasible to repair.

17.) The "CITY" has advised plaintiff that the only way that it would process his application would be by plaintiff agreeing to replace the "PROPERTY" with a like number of resident units that would be classified as low-cost housing.

18.) Plaintiff does not desire to go into the residential real estate rental business and simply desires to go out of business and be able to sell the land under the "PROPERTY", when demolished, on the open market.

19.) Plaintiff has not filed any appeal of the actions of the "DEPARTMENT" because:

A.) His application for a demolition permit was never denied, but simply not processed;

B.) The City has no process to appeal the refusal to process an application for a demolition process but only to request modification of building ordinances and/or

request for alternative material or method of construction;

C.) Any such appeals, even if available, would be futile as the "CITY" has already indicated it would deny such appeals.

20.) Plaintiff has fully complied with all requirements to obtain a demolition permit.

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR DECLARATORY AND INJUNCTIVE RELIEF

21.) Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-20, above, and incorporates same herein by reference as though set forth fully at length.

22.) Plaintiff has no other plain adequate or speedy remedy at law and will sustain continued irreparable and irremedial injuries and damages unless this Court issues a Preliminary Injunction and then a Permanent Injunction requiring the "CITY" and the "DEPARTMENT" to issue plaintiff a demolition permit without him having to agree to rebuild the "PROPERTY" in any form or manner.

23.) Monetary damages are inadequate as the "CITY" is continuing to incur daily expenses which they are attempting to pass on to plaintiff by way of an involuntary lien on the "PROPERTY" to secure and guard the "PROPERTY" with absolutely no end in sight.

24.) The actions of the "CITY" and the "DEPARTMENT" have resulted in the plaintiff sustaining irreversible injuries and daily loss of thousands of dollars which

would not be sustained if he were able to demolish the "PROPERTY", and sell his interest in the ground under the "PROPERTY" and unless the relief requested herein is granted such hardship and damages will be exascerbated [sic] to the point where plaintiff will be financially ruined and emotionally and physically destroyed.

25.) Plaintiff will also sustain irremedial and irreparable injuries and damages and be forced to file and defend a multiplicity of legal actions unless this court declares the "PROPERTY" not to be an S.R.O. HOTEL within the meaning of Los Angeles City Ordinance 164,827 and any temporary and/or permanent ordinances extending said ordinance and further unless this court declares the "PROPERTY" infeasible to repair.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR A WRIT OF MANDATE

26.) Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25, above, and incorporates same herein by reference as though set forth fully at length.

27.) Plaintiff/Petitioner has no administrative remedies in that the "CITY" and the "DEPARTMENT" have improperly defined the "PROPERTY" as an S.R.O. Hotel and any further appeals, even if available, would be futile as under said definition Los Angeles City Ordinance 164,827 would control the right of any appellate agency to overturn the refusal to process the demolition application.

28.) Los Angeles City Ordinance 164,827 as is being applied by the "CITY" and the "DEPARTMENT" in this

instance is unconstitutional as it attempts to circumvent and preempt a legitimate state interest, namely the "ELLIS ACT" (Government Code section 7060 et seq.), which allows a lessor of residential real estate to go out of business if he so chooses.

29.) The continued insistance [sic] by the "CITY" and the "DEPARTMENT" to require plaintiff to agree to rebuild the "PROPERTY" into low-cost residential units before it will issue him a demoliton [sic] permit will cause plaintiff to suffer irreparable and irreparable injuries and damages and ultimately cause him to lose all interest he currently has in the "PROPERTY" and the ground upon which it is situated on.

30.) Defendants have a mandatory duty to refrain from refusing to process and/or delay processing of the application for the demoliton [sic] permit and no such permit should be denied as a result of the Los Angeles City Ordinance 164,827 or any other ordinance extending said ordinance.

31.) Defendants refusal to process and then grant the demolition permit is arbitrary, capricious and an abuse of its discretion.

32.) Plaintiff has no other plain, speedy nor alternative remedy at law in that monetary damages will be insufficient to relieve plaintiff of the severe burdens and hardship imposed upon him by defendants/respondents unjustified actions.

33.) It is thus necessary that this court issue a Writ of Mandate commanding the defendants/respondents to process plaintiffs application for a demolition permit and

upon plaintiff completing all of the necessary steps to obtain such permit, to issue a permit to allow plaintiff to demolish the "PROPERTY".

34.) Plaintiff has filed a claim for tort damages against the "CITY" which is pending and will seek to amend this complaint petition upon the "CITY" rejecting said claim.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR ATTORNEYS FEES

35.) Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-34, above, and incorporates same herein by reference as though set forth fully at length.

36.) If successful herein, plaintiff/petitioner in bringing this action will result in the enforcement of an important public interest in that a significant benefit will be conferred on the general public and/or a large class of persons.

37.) The necessity and financial burden of private enforcement of this important right are such as to make an award of attorneys fees under CCP section 1021.5, appropriate and such fees should not in the interest of justice be paid out

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EXHIBIT B

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

SYED MOUZZAM ALI, Plaintiff/Petitioner, vs. CITY OF LOS ANGELES, a municipal corporation, LOS ANGELES CITY DEPARTMENT OF BUILDING AND SAFETY, Does 1 through 100, Inclusive, Defendants/Respondents.	CASE NO. C 736-585 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER AND REQUEST FOR JUDICIAL NOTICE **HEARING:** Date: November 28, 1989 Time: 8:30 a.m. Place: Department 15

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I.

INTRODUCTION

Plaintiff/petitioner Syed Mouzzam Ali ("Ali"), the owner of the Ferraro Hotel, located at 2065 West Sixth Street, seeks injunctive relief and a writ of mandate from this Court commanding Defendant/respondent City of Los Angeles ("City") and the Department of Building and Safety ("Depatment") to issue a demolition permit and allow Ali to demolish the Ferraro Hotel, which has been damaged by a string of mysterious fires since November, 1988.

Ali also seeks a declaration that the Ferraro Hotel is infeasible to repair and not a Single Room Occupancy ("SRO") Hotel covered by the SRO Hotel Demolition Moratorium Ordinance ("SRO Ordinance", see Exhibit A,[1] Ordinance No. 164,827). Furthermore, Ali seeks to [sic] quiet title to the Ferraro Hotel and damages from the City for negligence, forcible entry, forcible detainer, interference with contract, and negligent infliction of emotional distress.

The First Amended Complaint is premature because Ali has failed to allege that he has exhausted the administrative remedies available through either the SRO Ordinance or the Los Angeles Municipal Code ("LAMC"). Ali also has failed to allege facts sufficient to constitute a

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[1] All Exhibits are attached to the Request for the Court to Take Judicial Notice.

cause of action, and the First Amended Complaint is uncertain. Finally, Ali cannot maintain several causes of action because the City is immune from liability pursuant to the Government Code ("G.C.").

II.

STATEMENT OF FACTS

A. Factual Background

Ali alleges that he applied for a demolition permit for the Ferraro Hotel in January, 1989, subsequent to a fire on November 17, 1988 (First Amended Complaint, page 2: lines 22-28, p. 3: 1-2). Ali received, in February, 1989, a list of corrections required by the Department prior to issuing a demolition permit for the Ferraro Hotel (see application for a demolition permit and corrections, Exhibit B).

Ali also alleges that he received several orders from the Department regarding the Ferraro Hotel (First Amended Complaint, p. 2: 22-27, p. 3: 3-4, 8-21; see Department orders, Exhibit C.). Ali does not allege that he either complied with any of the corrections required by the Department or that he appealed any determination of the Department, including the orders or corrections, to the Board of Building and Safety Commissioners ("Board").

Ali further contends that the Ferraro Hotel "is not an S.R.O.). Hotel" within the definition of the SRO Ordinance. (First Amended Complaint, p. 4: 16-19.) However, the SRO Ordinance contains a procedure that would allow an owner to apply for an exemption from its provisions at any time. Despite these facts, Ali fails to allege in

the First Amended Complaint that he ever applied for an exemption from the City Council pursuant to the procedures outlined in the SRO Ordinance (Exhibit A. p. 5).

Furthermore, Ali alleges that the City negligently breached a duty to grant him a demolition permit and that the City forcibly entered and detained the Ferraro Hotel. (First Amended Complaint, pp. 9-12.) Ali maintains these allegations despite the fact that he failed to secure the unsafe Ferraro Hotel after repeated orders by the Department over a period of nine months (Exhibit C).

B. SRO Ordinance

The Ferraro Hotel was subject to the SRO Ordinance until the ordinance expired on midnight, September 5, 1989, the day before Ali filed the original Complaint.[2] This ordinance established a moratorium on the issuance of a demolition permit for any SRO hotel for 120 days. This moratorium allowed the City additional time to examine the problems and potential solutions to the threatened loss of irreplaceable SRO hotels, the housing source for many low-income and homeless persons.

The SRO Ordinance provided two administrative avenues for an owner to gain relief from the moratorium and obtain a demolition permit. First, a demolition permit could be issued to comply with an order by the Department pursuant to LAMC §§ 91.8903 or 91.8905 (see

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[2] A similar SRO Ordinance (Ordinance 165,145) replaced the ordinance that is the subject of this Complaint. The new SRO Ordinance is similar to the old ordinance, but it has a substantially different hardship exemption procedure.

Exhibit A, p. 4: 9-19). This procedure allows for the demolition of an SRO building which is either infeasible to repair or an immediate hazard to the public.

The second avenue for obtaining a demolition permit is a hardship exemption from the City Council. An owner of an SRO building is required to submit an application for a hardship exemption with the Rent Stabilization Division of the Community Development Department ("CDD"), and this application is forwarded to the City Council for a final determination (see Exhibit A, p. 5: 1-10). An exemption from the SRO Ordinance may be granted in cases of extreme hardship so established to the satisfaction of the Council.

C. The LAMC

Any determination by the Department can be appealed pursuant to LAMC §§ 91.8906(c)(3) and 98.0403(2)(a). This right of appeal would include the determination that a building is an SRO, infeasible to repair, or the imposition of a lien against a property (see LAMC provisions, Exhibit D).

III.

THE DEMURRER BY DEFENDANT MUST BE GRANTED SINCE ALI HAS FAILED TO ALLEGE FACTS SUFFICIENT TO EITHER INVOKE THE JURISDICTION OF THIS COURT OR TO CONSTITUTE A CAUSE OF ACTION

The sole basis for this action is the First Amended Complaint filed without any supporting declarations or affidavits. The First Amended Complaint is subject to

demurrer because Ali has failed to allege that he exhausted the available administrative remedies. Furthermore, Ali has failed to allege facts sufficient to constitute a cause of action.

A. This Court Is Without Jurisdiction Because Ali Failed To Exhaust His Administrative Remedies.

California courts have consistently held that before a person may obtain injunctive or mandamus relief from a decision of an administrative agency, that person must first exhaust all available administrative remedies provided under the appropriate ordinances. *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292; *Green v. City of Oceanside* (1987) 194 Cal.App.3d 212, 219; *Grant v. Superior Court* (1978) 80 Cal.App.3d 606, 608; *Friends of Lake Arrowhead v. Board of Supervisors* (1974) 38 Cal.App.3d 497, 503; *Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors* (1974) 35 Cal.App.3d 272, 279; 3 Witkin, *California Procedure* (3d ed. 1985) § 234, pp. 264-266.

Furthermore, California courts are without jurisdiction to act on a complaint until all of the available administrative remedies have been completely exhausted. *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 77. Failure to exhaust an administrative remedy is a jurisdictional, not a procedural, defect and dismissal is proper when a court lacks jurisdiction. *Wilkinson v. Norcal* (1979) 98 Cal.App.3d 307, 318. As outlined by the court in *Roth v. City of Los Angeles* (1975) 53 Cal.App.3d 679, 686, this principle has been stated as follows:

> " 'If an administrative remedy is provided by statute, it must be invoked and exhausted before judicial review of the administrative action is available. [Citations.] The rule is not a matter of judicial discretion, but rather is a jurisdictional prerequisite.' *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d. 280, 293."

The rationale for the rule has been explained by the Court in *Hayward v. Henderson* (1979) 88 Cal.App.3d 64, 70, as follows:

> "The administrative claim or 'cause of action' is within the special jurisdiction of the administrative agency, and the courts may act only to review the final administrative determination. Allowing a suit prior to such a final determination would constitute interference with the subject matter jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative remedy is a jurisdictional element in California."

1. Hardship Exemption From SRO Ordinance

Under the SRO Ordinance, Ali could apply at any time for a hardship exemption from the City Council. In order to properly exhaust his administrative remedies, Ali must allow the City Council, the final administrative decision-making body, to vote upon his hardship exemption. Since the First Amended Complaint fails to allege that an application for a hardship exemption was ever filed with CDD and considered by the City Council, Ali has failed to exhaust the single most important administrative remedy available.

2. Appeals Pursuant to the LAMC

Also, under the LAMC § 98.0403(2)(a), the Board has the jurisdiction to:

> "Hear and determine appeals from determinations, orders or actions of the Department or the Superintendent of Building pertaining to enforcement of codes under the jurisdiction of the Department."[3] (See Exhibit D.)

Ali admits in the First Amended Complaint that he has not filed any such appeal from the actions of the Department of Building and Safety (First Amended Complaint, p. 5: 7-8). Furthermore, Ali fails to allege in his First Amended Complaint that he attempted to comply with the corrections required by the Department in order to obtain a demolition permit (see Exhibit B). Moreover, Ali has not alleged that he attempted to appeal any determination of the Department, including: (1) a determination that the Ferraro Hotel is an SRO and repairable; (2) the allegation by Ali that the Department has refused to process his demolition permit application; or (3) the imposition, if any, of an assessment lien against the Ferraro Hotel. Therefore, it is clear that Ali has failed to exhaust his administrative remedies and that this demurrer should be sustained.

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[3] The Department is granted the power by City Charter § 90 to "enforce all ordinances and laws relating to the construction, alteration, repair, and demolition, or removal of buildings or structures in the city". See Exhibit E, City Charter § 90.

3. Quiet Title Action

Ali alleges in the Seventh Cause of Action (quiet title) that the City "with malice and without any legal justification" filed assessment liens against the Ferraro Hotel in order to pay for a private security guard and to secure the structure (First Amended Complaint, pp. 13-14). This cause of action is subject to demurrer because Ali did not allege that he had objected to this assessment, if any has been recorded, pursuant to the hearing procedure outlined in LAMC § 91.8906 (see Exhibit D).

Section 91.8906 of the LAMC states in relevant part:

> "**1. Assessment Against the Property.** Whenever the Department, . . . has caused the . . . securing of any building, structure, or portion thereof or any premises, the Department shall proceed to have all such costs . . . assessed against the property. . . . " (LAMC § 91.8906(b)(1).)

> "**3. Protest, Objections and Hearing.** Any person to whom notice is mailed, who receives a notice, or who otherwise is interested in or affected by the proposed assessment may appear in person or by counsel and/or may file a written protest or objection with the City Clerk. . . . " (LAMC § 91.8906(3).)

Without an allegation that Ali has appealed any alleged assessment(s) levied against the Ferraro Hotel, he has not exhausted his administrative remedies. If, contrary to the allegations of Ali, no assessments have in fact been levied against the Ferraro Hotel, then this Cause of Action is clearly moot. Either way, this Seventh Cause of Action is subject to demurrer.

Since Ali has failed to exhaust his administrative remedies by not appealing the determinations of the Department, including any assessment liens, and failing to file for a hardship exemption from the City Council, this Court is without proper jurisdiction to hear this First Amended Complaint. Therefore, pursuant to C.C.P. § 430.10(a), this demurrer should be granted without leave to amend.

B. The First Amended Complaint Does Not State Facts Sufficient To Constitute A Cause Of Action

1. The First Amended Complaint Is Moot Because the SRO Ordinance Expired Prior to the Filing of This Action

A court will generally refuse to review the decision of an administrative body when the subject matter of the case has become moot. *Callie v. Board of Supervisors* (1969) 1 Cal.App.3d 13, 18; *Hake v. City of Bakersfield* (1942) 49 Cal.App.2d 174, 175.

The original Complaint was filed by Ali on September 6, 1989, the day after the SRO Ordinance that is being challenged by Ali expired. Although another ordinance regarding SRO hotels was adopted by the City Council, the SRO Ordinance which is the subject matter of this case was not in effect when Ali filed the original Complaint. Furthermore, even though Ali has knowledge of the new SRO Ordinance, he has failed to allege such facts in the First Amended Complaint.

Therefore, pursuant to C.C.P. § 430.10(e), the First Amended Complaint by Ali does not state facts sufficient

to constitute a cause of action and this demurrer should be granted without leave to amend.

2. An Action for Interference With Contractual Rights is Improperly Alleged

Ali attempts to allege in the Eighth Cause of Action that the City intentionally interfered with his contractual rights (First Amended Complaint, pp. 14-15). This Cause of Action is deficiently pleaded because Ali has failed to include vital elements to substantiate this allegation.

The elements of an action for interference with a contract or prospective contractual relation include " 'the pecuniary loss of the benefits of the contract or the prospective relation. . . . ' " 6 Witkin, *Summary Cal. Law* (1988) § 1440, p. 114. It is also necessary in an allegation respecting tortious interference with prospective advantage to allege that the defendant "knowingly usurped" the relationship. *Rickel v. Schwinn Bicycle Co.* (1983) 44 Cal.App.3d 648.

In the First Amended Complaint, Ali does not allege any legally protected contractual relationship with which the City interfered, nor does he allege any particular prospective relationship. *Worldwide Commerce, Inc. v. Fruehauf Corp.* (1978) 84 Cal.App.3d 803, 810-811. Furthermore, Ali does not allege that the City knowingly interfered with any prospective relationship with the intent to attain an unjust advantage. *Rickel, supra,* at p. 658; see also, *Seaman's Direct Buying Service, Inc. v. Standard Oil Co.* (1984) 36 Cal.3d 752. Therefore, the First Amended Complaint fails to state a cause of action for interference with contractual rights by the City.

3. The SRO Ordinance Does Not Violate the Ellis Act

Ali claims that the SRO ordinance "as is being applied by the 'CITY' and the 'DEPARTMENT' in this instance is unconstitutional" because the SRO ordinance "attempts to circumvent and preempt a legitimate state interest," of G.C. § 7060, et seq., commonly referred to as the Ellis Act. (First Amended Complaint, p. 7: 9-14.)

This allegation is incorrect because the Ellis Act does not prohibit a municipality from enacting an ordinance regulating the issuance of demolition permits. The Ellis Act only prohibits a public entity from compelling the owner of residential real property to offer the property for rent or lease (see Exhibit F, G.C. provisions). Since the SRO ordinance does not compel Ali to offer his property for rent or lease, the SRO ordinance does not run contrary to the Ellis Act. Without the allegation that the SRO ordinance violates the Ellis Act, the First Amended Complaint is without sufficient fact to constitute a cause of action. Therefore, this demurrer should be granted without leave to amend.

IV.

THE FIRST AMENDED COMPLAINT IS SUBJECT TO DEMURRER BECAUSE THE CITY IS IMMUNE PURSUANT TO THE GOVERNMENT CODE

A. Government Code Sections 818.4 and 818.6 Provide Immunity Against Allegations Of Negligence.

Ali alleges in the Fourth Cause of Action that the City was negligent in failing to act on or grant the demolition permit and for failing to conduct any reasonable building inspections of the

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